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Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Ronald Brasher	)	
Licensee of Private Land Mobile Stations	)	
WPLQ202, KCG967, WPLD495, WPKH771,	)	
WPKI739, WPKI733, WPKI707, WIL990,	)	EB DOCKET NO. 00-156
WPLQ475, WPLY658, WPKY903, WPKY901,	)	
WPLZ533, WPKI762, and WPDU262	)	
Dallas/Fort Worth, Texas	)	
	)	
Et al.	)	
	)	

To: Administrative Law Judge
Hon. Arthur I. Steinberg

REPLY
TO BUREAU'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

On Behalf of:

RONALD D. BRASHER
PATRICIA A. BRASHER
DLB ENTERPRISES, INC. d/b/a
METROPLEX TWO-WAY

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Summary

Defendants respectfully submit to the Court that the Bureau has failed to meet its burden of proof in the case at bar. The issues presented in the Hearing Designation Order, on which this case is based, have not been supported by the Bureau with sufficient facts drawn from the record to impose sanctions on the Defendants.

The Bureau attempts in its Proposed Findings of Fact and Conclusions of Law to paint Defendants as evil doers out to pull a fast one over on the Commission and their own family members by using such tactics as: failure to cite to, or even mention, contradictory testimony; provision of irrelevant citations claiming to support some bit of speculation; offering of testimony without providing Defendants an opportunity for cross-examination; violation of clear orders issued by this Court; use of inaccurate paraphrasing of witness testimony; and out-right name calling. While Defendants recognize and appreciate the Bureau's role as akin to a prosecutor in this case, the Bureau has, on balance, chosen blind advocacy over accuracy and completeness.

Defendants have shown throughout this entire process a willingness to be completely forthcoming with regard to any and all inquiries made by the Bureau since the filing of the Net Wave petition. The Bureau's entire case is based on documents and evidence provided to the Bureau by Defendants. Simple mistakes, bad advice, and the *pro se* actions of an unsophisticated family do not support the Bureau's request that the Commission levy the equivalent of the death penalty against Defendants.

For the foregoing reasons, Defendants request that the Court rule in their favor and dismiss all claims posed in the Hearing Designation Order with prejudice.

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To: Administrative Law Judge
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REPLY TO BUREAU'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Ronald M. Brasher, Patricia Brasher, and DLB Enterprises, Inc. d/b/a Metroplex Two-Way ("Metroplex"), by and through counsel, pursuant to 47 C.F.R. §§ 1.263 and 1.264, hereby file jointly their Reply to the Bureau's Proposed Findings of Fact and Conclusions of Law in the above captioned matter:

Introduction

1. Defendants aver that the Bureau has failed to meet its burden of proof regarding the allegations and issues contained within the Hearing Designation Order (HDO) to demonstrate that any of those allegations and issues have a basis in fact. As stated *infra.*, the Bureau's inability to show the necessary evidence in support of its positions may, in part, be due to the Bureau's errors in citation or construction of its proposed findings, however, Defendants further assert that the facts of this matter are contrary to the Bureau's conclusions and do not support the severe sanctions sought by the Bureau.

2. Defendants respectfully request the Court take judicial notice of the Bureau's decision to produce its pleading not in accord with the Court's instruction. The Bureau did not quote or employ language from the record, as it was encouraged to do. The Bureau improperly employed string cites at the end of the sentences within its recitation of proposed findings of fact. Often time this use of string cites resulted in the inclusion of citations to the record which had no bearing on the Bureau's preceding statement. In full fairness, the Bureau followed the Court's specific instructions to not employ a string of citations at the end of a paragraph. However, the Bureau's manner of using string cites at the conclusion of paraphrased sentences[1] resulted in the problem which the Court sought to avoid via its instructions.

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[1] The Bureau relied almost exclusively on paraphrasing, rejecting the Court's instruction to "try to use the same language as was used by the witness or the same language that appears in the exhibit, rather than paraphrasing that language." (Tr. 2452.)

3. Defendants also respectfully note the Bureau's cumbersome use of extended citations.[2] This was particularly true on a number of occasions when a full reading of the extended citation failed to produce even a nugget of support for the Bureau's claim. The lack of specificity attendant to this manner of pleading is unduly burdensome on the Court and the Defendants, particularly when a search through the, say, ten pages cited revealed nothing in support of the preceding sentence. However, of greater concern is the effect that this method has on Defendants' ability to reply with specificity to the Bureau's alleged support for each statement. Defendants were left to guess as to what portion of those ten pages the Bureau was asserting as supportive of the Bureau's proposed facts.

4. In an unilateral effort to move this matter forward, Defendants decided against filing a motion with the Court, requesting that the Bureau amend its pleading to conform it to the Court's clear instructions. Instead, Defendants have carefully reviewed each of the Bureau's citations to the record and when a citation is irrelevant to the preceding statement which it purports to support, Defendants have indicated that problem by employing a different font within the duplication of the Bureau's sentences and citations provided herein. For example, if the Bureau states that "*Ron sent the applications to John Black on May 5. (Tr. 120; 156; 220-240; 1245)*" and defendants have determined that the citation to page 156 of the transcript is simply incorrect in that the testimony appearing on that page has no bearing on the preceding sentence, defendants have indicated this by employing the font Universe bold in non-italics, thereby making the

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[2] i.e. citations to multiple pages within the record within which may be buried one piece of testimony that supports the preceding sentence, made defendants' reply unnecessarily difficult.

example appear as follows: "*Ron sent the applications to John Black on May 5. (Tr. 120;* **156***; 220-240; 1245)*" thus, indicating that the testimony on page 156 is irrelevant to the preceding sentence. Defendants deem this method of response to be more efficient and less repetitious than stating again and again that the Bureau's citation is irrelevant and unsupportive of the facts proposed, or simply in error.

5. What is evident, however, by the numerous errant citations employed by the Bureau is that the Bureau has not met its burden, and certainly has not *demonstrated* that it has met its burden, to place on the record evidence sufficient to prove the facts necessary to support its positions. More often than not, when relevant evidence supportive of the Bureau's position is cited, the Bureau has chosen not to discuss contrary testimony or evidence existing on the record. Not only is this choice contrary to the Court's specific instructions, it suggests that the Bureau has employed an improperly selective recitation of the facts. Although Defendants are not unaware of the Bureau's duty to employ necessary advocacy skills in the furtherance of their duty, Defendants aver that the Bureau has, on balance, chosen advocacy over accuracy and completeness. And, in so doing, has shown more clearly that it simply cannot meet its burden of proof. As to the specific proposed findings suggested by the Bureau, the following is respectfully noted:

Reply to Bureau's Proposed Findings of Fact

6. *Ronald is a vice president and has been working for DLB since 1984. (Tr. 56-7).* [Bureau's P.F.F. para. 7.] The Bureau's statement is inaccurate. Numerous witnesses testified that Ron retired from DLB in November of 1998, (Tr. at 72, 770, 956, 1141-1142), and therefore, it is a misstatement of the facts for the Bureau to state that Ron has "been working for DLB since 1984." Additionally, testimony revealed that Ron no longer receives a salary from DLB, thus, supporting the true fact that Ron is no longer employed by DLB. (Tr. at 769-770.)

7. *Collectively, Patricia, Ronald, David and Diane make all major decisions for DLB. (Tr. 78-9; 771; 973; 1550).* [Bureau's P.F.F. para. 7.] The Bureau mis-characterizes the testimony of the witnesses. Although Ron is still involved in management decisions at DLB, Ron's involvement is "nowheres near like it was before [he] retired." (Tr. at 79.) Furthermore, although management decisions are joint decisions, Pat, as the President, has the final say. (Tr. at 769-771.)

8. *Both Patricia and David testified that Ronald and Patricia, as shareholders, will always have a hand in operating the business and that they have a right to be included in the decision making. (Tr. 770; 973)* [Bureau's P.F.F. footnote 2.] As expressed, the footnote proposes only that the Court note the existence of testimony, and not whether the testimony supports a fact which the Court may find to be true. In an abundance of caution, Defendants note that the Bureau's use of the alleged testimony is at odds with the record. David, not Pat, testified to Ron and Pat's "right" as shareholders to have a hand

in operating the business. (Tr. at 973.) Pat's testimony on page 770 does not reference Ron's or Pat's "right to be included in the decision making." Rather, Pat states that she and Ron, as stockholders, will have a hand in operating the business because "it's really too much for just two people to do." (Tr. at 770.)

9. *Diane has been DLB's corporate secretary since the company's inception and a full-time employee since April 1984. (Tr. 1538-39)* [Bureau's P.F.F. para 7.] Bureau's statement is contrary to the record which demonstrates that Diane was not an employee from February of 1986 to approximately February 1997. (Tr. at 1149.) Diane also left on temporary leave for surgery in 1996. (Tr. at 285.)

10. *Prior to November 2000, Ronald and David supervised the sales and service staff. (Tr. 166-68;* **776***)* [Bureau's P.F.F. para. 8.] The Bureau's statement does not accurately reflect the facts. The Bureau does not mention that Pat also supervised the service manager, Randy Graber, who then supervised the service personnel. (Tr. at 167-168.) Furthermore, Pat has the "[f]inal decision on firing anybody." (Tr. at 166.) Diane also testified that Pat was responsible for "financials and service." (Tr. at 1557.) Therefore, the Bureau's statement is inaccurate and misleading.

11. *Ronald had primary responsibility for licensing. (Tr. 942; 1557)* [Bureau's P.F.F. para. 8.] The Bureau fails to define the type of "licensing" for which the Bureau claims Ron was responsible. The Bureau's citations merely show that Ron was responsible for "overseeing DLB's compliance with FCC regulations" from June of 1996 through 1999, (Tr. at 942), and that Ron "did FCC stuff." (Tr. at 1557.) Neither of these citations support the contention that Ron "had primary responsibility for licensing."

12. *The most significant segment of DLB's business is its two-way radio service, referred to as repeater access service. (Tr. 624-25; 1151-52)* [Bureau's P.F.F. para. 10.] The Bureau's statement fails to define "repeater access service" and mis-characterizes the testimony. Ms. Lutz testifies that one-third of the receivables came from repeater systems, one-third came from sales, and one-third came from service, (Tr. at 1151), not that "the most significant segment" of DLB's business was its repeater access service. Ron does testify that his "repeater access customers...on the 800, 900 and T-band systems" constitute approximately 60% of DLB's business because DLB also sells those customers equipment and performs service work for those customers. (Tr. at 624-625.) Therefore, those customers constitute approximately 60% of DLB's business because the customers utilize the different aspects of DLB's business, such as equipment, sales, and service.

13. *The repeater access business and related work is approximately 60 percent of DLB's business. (Tr. 624-25; 909-910)* [Bureau's P.F.F. para. 10.] The Bureau fails to employ the entire record. Although Ron testified that repeater access customers constitute approximately 60% of DLB's business, (Tr. at 624-625), David testified that the percentage of revenue from repeater service is anywhere from 40% - 70%, (Tr. at 909.), and testified that repeater fees alone constitute approximately 10% to 25% of DLB's gross income. (Tr. at 909-910.)

14. *According to Ronald, DLB will probably go out of business if it loses its licenses and is unable to offer repeater service. (Tr. 626)* [Bureau's P.F.F. para. 10.] The construction of the Bureau's statement renders it merely a reflection of the content of the record, and

not a proposed fact to be found by the Court for any purpose. Additionally, the Bureau misstates the testimony offered by Ron. At Tr. 626, Ron did not testify as to what would happen if DLB lost its licenses. Rather, Ron stated that it would be "extremely doubtful" that DLB would be able stay in business if it "lost 60% of its business." (Tr. at 626.)

15. *DLB operates several stations, each of which is comprised of a repeater and related equipment. (Tr. 127-130)* [Bureau's P.F.F. para. 11.] The Bureau misstates Ron's testimony at Tr. 127-130. Ron did not testify as to what stations DLB operates, rather he testified regarding the construction costs and the equipment used in setting up the T-band stations. (Tr. at 127-130.)

16. *Mobiles within this range are able to talk with each other by sending a radio signal through the repeater.* (**Tr. 767**) [Bureau's P.F.F. para. 11.] The Bureau's failure to accurately cite to the record results in the Bureau's improperly testifying in this matter.

17. *Repeater customers also purchase radios and require service for their radios. (Tr. 1152)* [Bureau's P.F.F. para. 11.] The Bureau's statement is misleading in that it implies that all repeater customers purchase radios. Ms. Lutz testified that "it was possible to have a radio that you already owned and put it on the system too. We didn't always have to sell it to them. They may have purchased it from someone else. But they could still come to us and get it loaded on a system." (Tr. at 1152.)

18. *DLB personnel refer to 480-512 MHz stations as "T-band" (Tr. at 647-48; 1155-56).* [Bureau's P.F.F. para. 12.] For purpose of clarification and accuracy, defendants note that the radio band known as the "T-band" starts at 470 MHz, not 480 MHz. This band is

generally known, beyond DLB personnel, as the T-band because the band is shared with UHF television facilities.

19. *DLB operates 15 to 18 "T-band" stations serving 1000-1200 mobiles (Tr. 616)* [Bureau's P.F.F. para 12.] The Bureau's use of a range of stations, 15 to 18, is surprising as a proposed fact. Since the number of stations operated by DLB is material to this matter, the Bureau's use of a range suggests that a finding of any amount within the proposed range is acceptable. Accordingly, defendants move that the Court adopt 15 as the appropriate amount for those times relevant to this matter. Defendants further note that the Bureau employed a present tense, however, since the Bureau rendered its decision in *Lutz* (cite provided below) this statement is no longer accurate, even at 15. Finally, Defendants note that the Bureau proposes the Court find that the stations are serving 1000-1200 mobile units. However, the Bureau omits a proposed finding of fact that this level of loading is sufficient to justify DLB's eligibility to hold licenses for operation of each of the 15 T-band stations it operates.

20. *T-band customers pay a fee (approximately $15 per mobile) for their primary site (usually Dallas) and a small additional fee (approximately $3) to use either or both of the other sites. (Tr. 67, 68-69, 151, 2423; 886-87: RP/PB Ex. 7)* [Bureau's P.F.F. para. 12.] The Bureau misstates the testimony. T-band customers "generally pay $15 for one site, and $2 to $3 for each additional site." (Tr. at 67, 887.) [Emphasis added]

21. Insofar as the Bureau provides no reference or citation to evidence or testimony contained within the record in support of its statements, the contents of paragraphs 13 through 15 should be given no weight and should be found to be nothing more than the Bureau's

testifying, which action is beyond the scope of the Bureau's duties or legal capabilities in this matter. In an abundance of caution, Defendants deny all sweeping statements contained therein which either suggest Defendants' culpability or state that Defendants have acted in any improper manner.

22. The Bureau omits any reference to that testimony provided regarding the advice given to Ron about using third party managed facilities in the application process. (Tr. at 579, 585-589, 647-650, 1643, 1691, 1639, 1631, 1775.) Absent that testimony, the Bureau's proposed facts infer that Ron acted independently of such advice or that such advice was not provided. The record does not support such an inference. However, of perhaps greater importance, the omission demonstrates the Bureau's rejection of the Court's instruction to provide a balanced approach to the record in the presentation of proposed facts. The Bureau has chosen to employ this omission to gloss over the fact that it was Ron's intention to follow the advice of John Black and Scott Fennell, not to violate the Commission's rules.

23. *Ronald Chose the site for the potential licenses because DLB needed the coverage that the site selected would provide. (Tr. 111-13,* **117, 498-99,** *1626-27)* [Bureau's P.F.F. para. 18.]

24. *John Black prepared the applications and returned them to Ronald. (Tr. 413)* [Bureau's P.F.F. paragraph 19.] Logic and the evidence at trial prevent the Bureau from asserting these facts. While John Black prepared the subject applications and sent them to Ron, Black did not "return" them to Ron. For this to have occurred, Ron must have been in possession of the applications prior to Black's actions. This statement is factually

inaccurate and contrary to the record. Ron only sent a list of names and addresses (not applications) to John Black. (Tr. at 108-109, 1632-1633; Eb Ex. 66.) Further, the Bureau's failure to include proposed facts relative to the activities which transpired between the time that prepared applications were received and the time when those applications were submitted to PCIA (i.e. during the signing) demonstrates the Bureau's attempt to suggest that the signing of the applications occurred by Ron's unilateral acts. This suggestion is fully contrary to the record.

25. *Ronald and Patricia took these actions even though they (and David) knew that O.C. was dead. (Tr. 345;* **804***;951).* [Bureau's P.F.F. paragraph 21.] The parenthetical reference to David is fully gratuitous as out of context for the time period referenced. David was not an employee of DLB's at the time, and the record does not demonstrate any involvement by David in the preparation or filing of any application bearing O.C.'s name.

26. *Ronald justified the filing by asserting that O.C. had intended to have a station. (Tr. 604).* [Bureau's P.F.F. paragraph 21.] The Bureau goes beyond the record in stating that Ron "justified" the filing of the application. In doing so, the Bureau is testifying as to its subjective interpretation of Ron's state of mind with regards to his explanation as to why he thought the license was an asset of O.C.'s estate. The Bureau does not explain to whom Ronald was supposedly justifying his actions. If the action was directed to Ronald himself, then the statement supports Defendants' contention that Ron's actions were believed appropriate by Ron.

27. *In this regard, Ronald noted that O.C. had signed a different application dated June 29, 1995, which was never filed with the Commission because, supposedly, it had been*

mishandled by the frequency coordinator. (EB Ex. 68; Tr. 341-42) [B.F.F. para. 21.] The Bureau's use of the introductory phrase "[i]n this regard" references the previous sentence and its improper characterization of Ron's testimony as a "justifying" of his acts. That the Bureau then points to something noted at trial by Ron is a reflection of the events of trial, not an expression of a proposed finding of fact, therefore, the Court should give the statement no weight for a purpose not requested by the Bureau. Finally, the use of the word "supposedly" is wholly gratuitous and should be ignored as the Bureau's improper editorializing, particularly in view of the fact that the Bureau cannot cite any evidence which is contrary to the questioned testimony. Thus, the Bureau is improperly testifying as to its beliefs and offering conclusions of law in the fact section, contrary to the Court's clear instructions.

28. *Patricia claimed that she was unconcerned about the 1996 filing because she considered that application to be a part of O.C.'s estate. (Tr. 874).* [Bureau's P.F.F. paragraph 21.] The Bureau mis-characterizes the record testimony. Nothing in the record supports the statement that Pat was "unconcerned" about the 1996 filing. Although Pat testified that she believed the license to be part of the estate, there is no testimony that she was "unconcerned". Pat did not think there was a problem in sending the application in the name of the deceased O.C. because she thought "[i]t was like a re-file"of the aforementioned June 29, 1995 application. (Tr. at 874.)

29. *The Commission granted O.C.'s application on September 25, 1996, resulting in the license for Station WPJR761. (Tr. 281,* **345-46***; RB/PB Ex. 3).* [Bureau's P.F.F.

paragraph 21.] It is not clear to which application the Bureau is referring, the application signed by O.C. or the replacement application.

30. The Bureau omitted all facts related to that evidence and testimony provided regarding Ron's actions taken as the *de facto* executor of O.C.'s estate or as O.C.'s agent pursuant to the power of attorney. This omission is further evidence of the Bureau's strategic use of only selective facts, rather than the entire record.

31. *Ronald signed the document as "O.C. Brasher EST. R.D. Brasher." (RB/PB Ex. 3; Tr.* **220***)* [Bureau's P.F.F. para. 22.] Insofar as the Bureau's citation is incorrect, the statement is either an improper event of the Bureau's testifying or is merely a reflection of the contents of the exhibits offered at trial which, without cited relevant testimony, speak for themselves.

32. *Ronald testified that he intended "EST." to mean "Estate." (Tr. 655)* [Bureau's P.F.F. para 22.] The Bureau's statement is true as a reflection of the contents of the uncontradicted testimony provided at trial and, thus, Ron's state of mind. Ron believed he was acting as executor and under a power of attorney. (Tr. at 225-226, 299-301, 330-333, 597-599.) The Bureau provides it legal opinion regarding Ron's authority as executor and holder of the power of attorney, however, the Bureau's opinion is irrelevant to this matter.

33. *However, Ronald did not intend this to be official notice to the FCC that O.C. was deceased. (Tr. 654-655)* [Bureau's P.F.F. para 22.] The transition word, "however", suggests that despite the Bureau's mere restatement above of the content of Ron's testimony, the Bureau is asserting in this statement a proposed fact which is, therefore,

not premised on its earlier statement. Although this method of proposing facts is disturbing, what is more disturbing is that the Bureau does not explain what method, if any, Ron might have taken to cause "official notice" to the FCC to occur, or whether such an action is even possible. In essence, a review of the relevant testimony shows that the Bureau's question called for a legal opinion to be given by Ron based on Ron's *pro se* interpretation of what an official notice might be, what form it might take, and under which rules or policies it might be rendered. Based on Ron's ignorance and the Bureau's lack of explanation at trial, Ron obviously assumed that he had not performed some "official" act and his answer thus reflected that lack of legal knowledge. For the Bureau to make anything more out of this portion of the testimony is well beyond the quality of the record and the question posed to Ron at trial.

34. *On September 1, 1998, Ronald filed an application requesting, inter alia, the assignment of station WJPR761 from O.C. Brasher to DLB. (EB Ex. 20, in particular, see pp. 3, 10; EB Ex. 21, p. 24).* [Bureau's P.F.F. para. 23.] The Defendants are confused by the Bureau's continuous use of the term *inter alia.* In essence, by using this term, the Bureau is asserting a faulty premise. The Bureau offers no testimony or support that on September 1, 1998, Ron did anything relevant to this matter other than file an application requesting assignment of station WPJR761 or that such application requested anything more than the assignment of the station.

35. *Ronald signed O.C.'s name and dated the application "1/26/98." (EB Ex. 20, p. 10; EB Ex. 21, p. 24).* [Bureau's P.F.F. para. 23.] The statement is unsupported by the Bureau's citations. EB Ex. 20 is a copy of the Application for Assignment of Authorization and,

standing by itself, offers no proof that Ron signed the application in O.C.'s name. EB Ex. 21 p. 24 merely states that Ron "prepared and submitted" the application. "Prepared and submitted" are not analogous to "signed and dated". The Bureau is herein attempting to assert facts that do not exist within that portion of the record cited.

36. *As of March 9, 1999, DLB has operated Station WPJR761 purportedly pursuant to a management agreement. (EB Ex. 5)* [Bureau's P.F.F. para. 24.] The Bureau does not explain why this act is "purported" or by whom. This obvious attempt to taint the facts by such qualifier is not useful for determining what facts the Bureau is purporting to have accepted by this court. Defendants further note that without citation to record testimony, the cited exhibit is left to speak for itself.

37. *In response to Commission letters of inquiry dated March 4, 1999, Jim Sumpter (not DLB) informed the Commission in April 1999 that O.C. was deceased. (EB Ex. 18;* **EB Ex. 19, p. 2**; *EB Ex.* 36; *EB* Ex. *37, p. 6).* [Bureau's P.F.F. para. 25.] The Bureau refuses to acknowledge that in 1997 Ron submitted a Form 800A regarding O.C.'s status and the existence of O.C.'s estate. The signature on said Form 800A read, "O.C. Brasher EST. R.D. Brasher", effectively informing the Commission that O.C. was deceased. The Bureau's further use of Jim Sumpter's reply to the Bureau's inquiry is wholly gratuitous and not useful. The Bureau does not cite to the questions asked by the Bureau in its inquiry, or Defendants' responses to those questions. (EB Ex. 16, 17, 18, 19, 21.) A review of those documents demonstrates that Defendants answered the questions asked by the Bureau, which was the extent of Defendants' duty, and that any interpretation which suggests the contrary is without merit or evidentiary support. That Jim Sumpter

may have gone beyond the scope of the Bureau's inquiry is, perhaps, true, but it is not significant for the purpose of demonstrating any wrongdoing by Defendants.

38. *Ultimately, only after being asked directly by the Commission, did DLB confirm in October 1999 that O.C. had died in August 1995. (EB Ex. 21, pp 1, 2, 5, 10, 15, 19, 24, 47; EB Ex. 23)* [Bureau's P.F.F. para. 25.] The Bureau infers that DLB was hiding the fact that O.C was deceased. It is factually correct that the Commission directly asked DLB to confirm whether O.C. was deceased. However, for the Bureau to insinuate that DLB revealed this information "only after being asked by the Commission" requires one to ignore the record evidence. The executed Form 800A signed in 1997 as "O.C.Brasher EST. R.D. Brasher" refutes the Bureau's assertion that DLB was attempting to hide the fact that O.C. was deceased. (Tr. at 614-615, 655; RB/PB Ex. 3.) Finally, the Bureau's editorialized comment suggests that Defendants had a duty to reply beyond the scope of the Bureau's earlier questions and to reiterate to the Bureau what Defendants reasonably believed the Bureau already knew.

39. *Her married name was Ruth Brasher, the name by which most people knew her. (TR. 977; 1224-25; 1580).* [Bureau's P.F.F. para 26.] The Bureau fails to employ the entire record in its assertion that most people knew Ruth Bearden by her married name, Ruth Brasher. Ms. Lutz testified that she knew Ruth as "Ruth Brasher" and that she (Lutz) never heard anyone call Ruth by her maiden name, "Ruth Bearden." (Tr. 1224-1225.) Diane merely testified that she (Diane) knew Ruth used the name Brasher. (Tr. 1580.) This testimony is insufficient to support a finding that most people knew Ruth as "Ruth Brasher." The Bureau fails to address Ron's testimony as to Ruth's use of her maiden

name. (Tr. 172.) While both Ron and Ruth worked at Sears, the company requested that Ruth use her maiden name to prevent confusion. (Tr. at 172.) "Almost all of Ruth's friends at Sears knew her as Ruth Bearden." (Tr. at 173.) Ron's testimony was simply ignored by the Bureau.

40. *Nevertheless, in 1996, Ronald asked John Black to prepare an application in Ruth Bearden's name. (EB Ex. 66 at 1;* **Tr. 171-72**, *432-33;* **874-75**; *1580-82).* [Bureau's P.F.F. para. 26.] The Bureau's omitted references to that testimony regarding Ron's belief that he was acting as *de facto* executor of his mother's estate and, therefore, under color of law is conspicuously missing in the Bureau's recitation. Again, the Bureau is employing selectivity in its proposed facts and ignoring the Court's instruction to balance the facts.

41. *Patricia knew that the check she wrote for the application was for the purpose of obtaining a license for Ruth Bearden, which she claimed to be acceptable even though Ruth was dead. (Tr. 785-86, 875; EB Ex. 9, p. 2)* [Bureau P.F.F. para. 26.] The Bureau mis-characterizes Pat's testimony as to why she believed obtaining a license in Ruth's name was permissible. Pat testified that she did not believe it was "proper" to file applications in the names of dead people, but did so with Ruth "because [she] felt like Ruth's business was still [Ron and Pat's] business." (Tr. at 875.) The Bureau's use of the word "claimed" is obviously intended to suggest the questionable nature of Pat's statements, as viewed wholly by the Bureau. As expressed, the Bureau's use of the word reduces that portion of the statement to be a reflection of events at trial, rather than a proposed fact regarding the content of the statement.

42. *Grant of that application resulted in the license for Station WPJR762 for 90 mobiles. (***TR. 171***, 201; EB Ex. 9, p. 8; EB Ex. 10, p. 1; EB Ex. 11, p. 5).* [Bureau's P.F.F. para. 26.] Insofar at the Bureau does not cite to supportive testimony, the exhibits speak for themselves. Insofar as the Bureau did not include that testimony regarding Ron's intent that any license would only authorize operation of ten mobiles, the Bureau has again injudiciously selected its proposed facts.

43. The more troubling omission at paragraph 26 is the Bureau's failure to include any evidence or testimony regarding Ron's attempts to have the application not result in a license via his correspondence with PCIA. (Tr. at 203-206; EB Ex. 14.) No where does the Bureau discuss this effort. Thus, the Bureau's selective application of facts results in an inaccurate and incomplete reflection of the total record. As a further example, the Bureau does not find significant that no executed 800A was filed for this facility. If, as the Bureau is attempting to suggest, Ron intended to abuse the Commission's processes in the manner claimed by the Bureau, his not filing a notice of construction for the subject facility would be evidence that Ron did not intend to abuse the Commission's processes. Thus, the reason for the Bureau's omission is obvious.

44. *Although Ronald does not remember his role in the application, he acknowledges that the signature on the assignment application looks like his handwriting and appears similar to the signature he admits signing on EB Ex. 9 at 4. (Tr. 171, 222).* [Bureau's P.F.F. para. 29.] The Bureau's recitation of the facts is inconsistent with the testimony of record. Nowhere in the Bureau's citations to Ron's testimony does Ron acknowledge that the signature on the assignment application appears similar to that signature he

admitted signing on EB Ex. 9 at 4. Furthermore, the Bureau mis-characterizes Ron's testimony as to the similarity of the signature on the assignment application to his own. Ron testified, "I'm not sure, it looks like mine, but I don't think so, but it could be." (Tr. 222.) Additionally, the Bureau's statement is not a proposed fact, but a mis-reflection of acts at trial which stand for nothing within the context of the Bureau's pleading.

45. *The Commission sent the letter canceling Ruth's license to 224 Molina Drive, Sunnyvale, Texas 75182, which was Ronald's home address as well as the address of record for Ruth Bearden. (EB Ex. 10, pp. 1-2; Tr. 46,* **181***).* [Bureau's P.F.F. para. 27.] The citations do not demonstrate the truth of the Bureau's statement and include contrary testimony at Tr. 181. The Bureau did not show that the subject letter was sent to the subject address. Rather, it showed only that the letter was addressed to that location.

46. Paragraph 28 suggests that Ron received the cancellation letter at his home and suggests no obvious contrary explanation, such as Ron receiving the letter via counsel.

47. *Ronald also now holds the license for Station KCG967 as a result of an assignment of that license from Ruth Bearden. (Tr. 1715-18; EB Ex. 13).* [Bureau's P.F.F. para 29.] Insofar as the Bureau employs the word "also," Defendants cannot discern the proposed fact.

48. *Ruth "signed" her part of the application on October 18, 1994, more than three years after her death. (EB Ex. 13, p. 5).* [Bureau's P.F.F. para 29.] At best, the Bureau's statement is unwarranted sarcasm. At worst, the statement stands for the proposition that the Bureau wishes the Court to adopt the fact that Ruth Bearden was capable of executing

Commission forms following her death. In either event, the statement is without merit for the reason proffered.

49. *In response to the Commission letters of inquiry dated March 4, 1999, Jim Sumpter (not DLB) informed the Commission in April 1999 that Ruth was deceased. (EB Ex. 18; EB ex 19, p. 2, EB Ex. 36; EB ex. 37, p. 6).* [Bureau's P.F.F. 30.] As stated *supra.*, Defendants responded to the Bureau's questions and did not attempt to read into them any additional request. That Jim Sumpter might have gone beyond the scope of the questions is not significant. Additionally, the Court may note that the subject license had been cancelled by this time and that Ruth's status was, therefore, made moot by the cancellation of the license.

50. *Ultimately, only after being directly asked by the Commission, did DLB confirm in October 1999 that Ruth had died in April 1991. (EB Ex. 21, pp. 1, 3, 5, 10, 15, 19, 25, 59; EB Ex. 23).* [Bureau's P.F.F. para. 30.] When asked, Defendants provided thorough, truthful answers. Defendants had no duty to deduce what information the Bureau is seeking or might require and to provide such information based on presumptions. Absent the existence of such duty, there was no breach of any duty and the Bureau's attempt to suggest otherwise is unfounded.

51. *According to the Sumpters, they did not participate in the preparation of the 1996 applications, nor did they authorize, review or sign those applications before they were submitted to the Commission. (Tr. 1049-51, 1076-78, 1120-22; 1318-21; 1942-43; 2011-12, 2029, 2102; EB Ex. 34; EB Ex. 35; EB Ex. 37; Ex. 41; EB Ex. 45; EB Ex. 49; EB Ex. 52; EB Ex. 54; EB Ex. 55).* [Bureau's P.F.F. para. 32.] Evidence such as the "client

copies", (EB Ex. 19 at 200, EB Ex. 19 at 208, EB Ex. 19 at 216), and the letters executed by the Sumpter women to Ron and Pat claiming that "I know that you had used my name", (EB Ex. 47, EB Ex. 53, EB Ex. 56), prevent the Bureau from establishing the Sumpter assertions as uncontested fact. The Bureau's own expert witness testified that the signatures on the client copies "appear to be genuine." (Tr. at 2360-2361.) The letters signed by the Sumpter women state that they knew of the applications being filed in their names, "but understood that if a channel was awarded then [Ron or Pat] would immediately transfer it to [Ron or Pat's] name." (Tr. at 1064, 1371, 2051; EB Ex. 47, EB Ex. 53, EB Ex. 56.) Taking these facts into consideration, it is apparent that the Sumpters had knowledge of the applications and authorized the filing of those applications in their names. Furthermore, the Bureau cannot assert that there is a collective denial by all the Sumpters. Jennifer claims that she "just doesn't remember" signing the client copies, (Tr. 1121.), but she does not unequivocally state that she did not sign them. Jennifer claimed that the signatures on the client copy "looked like her signature", but that "[she] doesn't remember signing anything as Hill." (Tr. at 1068-1071.) Furthermore, Jennifer was not surprised that there was a 1996 application in her name. (Tr. at 1117.) The above considered, the Bureau has not expressed a proposed finding of fact, but rather, an observation of what the Sumpters have expressed. The Bureau notes that "according to the Sumpters" thus and such... This sentence is, therefore, an expression of the Sumpters' alleged belief and does not include a statement of fact posited by the Bureau.

52. *As will be discussed more fully infra, the Bureau believes that DLB made misrepresentations with respect to filings and testimony that the Sumpters, either*

individually or collectively, knowingly signed certain applications or otherwise knowingly participated in the process of obtaining the licenses or operating the licensed stations. [Bureau's P.F.F. footnote 6.] The Bureau's beliefs are not relevant to the proposed findings of fact and are unsupported by the record, which does not include the opinions of the Bureau. In fact, this footnote is an improper effort to include conclusions of law within the findings of fact, and, thus, should be given no weight whatsoever.

53. The Bureau's paragraph 32 omits substantive portions of Gale Bolsover's testimony that included her stated inability to identify the specific person who signed the Sumpter applications, (Tr. at 2346), despite having a substantial number of handwriting and signature samples from each of the Defendants. (Tr. at 2316-2319, 2346-2347.) In fact, Ms. Bolsover eliminated Ron as a potential signer of Jim's application. (Tr. at 2319.) The Bureau's failure to include this evidence in its recitation of proposed facts again evinces its desire to employ a highly selective repudiation of the facts.

54. *Although Patricia testified that Jennifer called to inform her that she, Jennifer, had received her license, Jennifer did not recall receiving the license. (***Tr. 818***; 1114-15)* [Bureau's P.F.F. footnote 7.] The Bureau again fails to express a proposed finding of fact. Although this sentence presents a rare expression of almost contradicting testimony, the Bureau fails to propose a finding of fact. Rather, the Bureau simply points out what the two witnesses said upon the stand.

55. *The Sumpter household and office had been receiving Commission-related mail for several years because of applications previously signed by Norma Sumpter. (EB Ex. 42; EB Ex. 43; EB Ex. 44; EB Ex. 45, p. 1; Tr. 1988-89, 2003-20, 2077-78, 2124-25, 2127-*